SAMPLE DRAFT PROCEDURES. Due to the pre-mature release of the SEC's new Marketing Rule, these procedures have not been fully vetted by SEC FAQs or examinations, compared to other procedures in the industry, nor has CRP reviewed exemptions by the SEC during an exam. We will amend them as CRP receives guidance and feedback during our exams or SEC FAQs.

MARKETING & ADVERTISING

BACKGROUND

Rule 206(4)-1 under the Advisers Act prohibits certain types of advertisements, including any advertisement that contains any untrue statement of material fact, or that is otherwise false or misleading. Additionally, the Advisers Act's broad anti-fraud provisions apply to all written correspondence; even items that are excluded from the definition of an advertisement must not contain any false or misleading statements. Effective May 5th, 2021, the Securities and Exchange Commission implemented reforms under the Investment Advisers Act to modernize rules that govern investment adviser advertisements and payments to solicitors. The amendments create a single rule that replaces the current advertising and cash solicitation rules.

While general prohibitions are still in place, such as using misleading or untrue statements and omitting material facts, the use of testimonials and endorsements will be allowed, with certain disclosure and oversight requirements. As with all advertisements, any use of testimonials must be submitted to Compliance for review and approval prior to use.

DEFINITION OF ADVERTISEMENT

For purposes of this section, the definition of an advertisement includes two prongs:

First Prong: *Any direct or indirect communication* an investment adviser makes to more than one person, or to one or more persons if the communication includes hypothetical performance, that offers the investment adviser's investment advisory services with regard to securities to prospective clients or investors in a private fund advised by the investment adviser or offers new investment advisory services with regard to securities to current clients or investors in a private fund advised by the investment adviser, but does not include:

- extemporaneous, live, oral communications;
- information contained in a statutory or regulatory notice, filing, or other required communication, provided that such information is reasonably designed to satisfy the requirements of such notice, filing, or other required communication; or
- a communication that includes hypothetical performance that is provided:
- in response to an unsolicited request for such information from a prospective or current client or investor in a private fund advised by the investment adviser; or
- to a prospective or current investor in a private fund advised by the investment adviser in a one-on-one communication; and

Second Prong: *Any endorsement or testimonial for which an investment adviser provides compensation, directly or indirectly*, but does not include any information contained in a statutory or regulatory notice, filing, or other required communication, provided that such information is reasonably designed to satisfy the requirements of such notice, filing, or other required communication.

A "testimonial" is defined in new Rule 206(4)-1(e)(17) as a statement by a current client about the client or investor's experience with the adviser or its supervised persons. This term also includes a statement that solicits a current or prospective client or investor for or refers a current or prospective client or investor to, the adviser or a private fund it advises.

An "endorsement" is similar, but it is made by a person other than a current client or investor, and may include a general approval, support or recommendation of the adviser or its supervised persons.

GENERAL PROHIBITIONS

Rule 206(4)-1(a) subjects all investment adviser advertisements to certain general prohibitions. These include bans on:

- False or misleading statements or omissions of a material fact;
- Material statements of fact the adviser does not reasonably believe it can substantiate if the SEC asks it to;
- Information that would reasonably be likely to cause a client or prospective client to draw an untrue or misleading implication or inference about a material fact regarding the adviser;
- Statements about specific investment advice rendered by the adviser or the adviser's performance, unless those statements are fair and balanced;
- Statements about the potential benefits to clients or investors arising from the adviser's services or operations without providing fair and balanced treatment of relevant material risks or limitations, and
- Advertisements that are otherwise materially misleading.

ADVERTISEMENT PROCEDURES

The Firm has adopted the following procedures to adhere to Rule 206(4)-1:

- Prior to use of any marketing materials, the CCO and/or designee will review and approve all advertisements and promotional materials used by the Firm.
- Only Approved marketing materials are used with clients and/or prospects.
- Modifications to any approved marketing materials must be approved by CCO prior to use. Written approval and review is required by the CCO.
- The CCO is responsible for conducting periodic reviews to ensure that only approved materials are distributed to clients and/or prospects.
- The CCO will be responsible for periodic testing designed to ensure that the Firm make and keep records of the following:
    - Advertisements used with current clients and/or prospects (includes recordings or copies of any written or recorded materials used in connection with an oral advertisement)
    - Required disclosures delivered to investors (applicable to testimonials, endorsements, and third-party ratings)
- Form ADV Item 5.L. to ensure responses are current and accurate regarding our use in advertisements of performance results, hypothetical performance, references to specific investment advice, testimonials, endorsements, or third-party ratings (to be reviewed at least annually)

BOOKS AND RECORDS

The Firm must make and keep records of all "advertisements" they disseminate, subject to alternative methods of compliance for oral advertisements, including oral testimonials and oral endorsements. The Firm must retain advertisements sent to one or more persons. Records may be stored using email archives (including in cloud storage or with a third-party vendor), provided that the Firm can promptly produce records in accordance with the recordkeeping rule and SEC guidance.

TESTIMONIALS AND ENDORSEMENTS

POLICY

[OPTION 1] – PROHIBIT USE OF TESTIMONIALS AND ENDORSEMENTS

Without exception, Firm does not allow use of testimonials or endorsements in marketing and advertising.

OR

[OPTION 2] – ALLOW FOR USE OF TESTIMONIALS AND ENDORSEMENTS

The Firm does allow for use of testimonials and endorsements in marketing and advertising when the following disclosure and Rule conditions are followed as discussed below. All testimonials used in advertising must be received in writing and maintained in a Testimonial file (can be physical or electronic), and they must be approved by Compliance prior to use (as with any marketing material).

"Advertisement" includes any endorsement or testimonial for which an investment adviser provides compensation, directly or indirectly. A testimonial includes any statement, written or oral, by a current client about the client's experience with the Firm or its supervised persons.

Testimonial - any statement by a current client advised by the investment adviser:

- About the client or investor's experience with the investment adviser or its supervised persons.
- That directly or indirectly solicits any current or prospective client to be a client of the investment adviser; or
- That refers any current or prospective client or investor to be a client of the investment adviser.

An **endorsement** includes any statement, written or oral, by a person other than a current client that:

- Indicates approval, support, or recommendation of the investment adviser or its supervised persons or describes that person's experience with the investment adviser or its supervised persons.
- Directly or indirectly solicits any current or prospective client or investor to be a client of, or an investor in a private fund advised by, the investment adviser; or
- Refers any current or prospective client or investor to be a client of, or an investor in a private fund advised by, the investment adviser.

Testimonials and endorsements also include solicitation and referral activities, including statements that directly or indirectly solicit any investor to be the Firm's client, or refers any investor to be the Firm's client and lead-generation Firms and adviser referral networks. Lists of clients or investors may be presented if the basis for inclusion and exclusion is independent of performance and is fully disclosed in the advertisement, which also presents a warning to the effect that inclusion of the list does not necessarily mean that the listed clients are satisfied with the investment adviser's services. Merely permitting the use of the "like", "share", or "endorse" feature on a third-party website or social media platform is not considered a testimonial or endorsement.

Examples of activities likely to be deemed an endorsement or testimonial include the following:

- Websites of lead-generating Firms or adviser referral networks (endorsement);
- A blogger's website review of an adviser's services (endorsement or testimonial);
- A lawyer or other service provider that refers an investor to an adviser, even infrequently (endorsement or testimonial); and,
- Solicitor arrangements previously made under Advisers Act Rule 206(4)-3, the "Cash Payments for Client Solicitations Rule").

Examples of activities that are likely **NOT** deemed to be an endorsement or testimonial include the following:

- A third-party marketing service or news publication that prepares content for the adviser or disseminates content (such as an adviser newsletter); or,
- A company that provides a list containing the names and contact information of prospective investors.

DISCLOSURES

In order to utilize testimonials or endorsements in advertising, the Firm must at the time the testimonial or endorsement is disseminated, provide clear and prominent disclosure that:

- Indicates the testimonial was given by a current client or the endorsement was given by someone other than a current client;
- Indicates that compensation was provided for the testimonial or endorsement, this includes cash or non-cash compensation, if applicable, and
- Includes a brief statement regarding any conflicts of interest on the part of the person giving the testimonial or endorsement resulting from that person's relationship with the Firm.

Material terms include:

- Whether the adviser will be paid a specific cash amount or a percentage of total advisory fees over a period of time, the value of any non-cash compensation if that value is readily ascertainable.
- Any condition to the payment, i.e., a requirement that the client continue or renew the advisory relationship, and
- Whether compensation is payable upon dissemination, deferred, contingent, or trailing.

The disclosure should state that the Promoter, due to the compensation received, has an incentive to recommend the adviser, resulting in a material conflict of interest, and any other material conflicts of interest arising from the Promoter's relationship with the Firm. These disclosures must be provided at the time the testimonial or endorsement is disseminated.

Clear and prominent means that the above disclosure must be included within the body of the material for written communications and may be presented in written format or orally in connection with an oral testimonial or endorsement. The disclosure language is required to be shown in the same font size as the rest of the draft. Hyperlinked disclosure will not suffice.

COMPENSATED TESTIMONIALS AND ENDORSEMENTS

The Firm may provide cash or non-cash compensation to a person providing a testimonial or endorsement (a "Promoter"), provided the following conditions are met:

- **Reasonable Basis**. The Firm must have a reasonable basis for believing that the testimonial or endorsement complies with the requirements of the SEC's Marketing Rule.
- **Written Agreement.** The Firm must maintain a written agreement with any person giving a testimonial or endorsement for compensation. The written agreement must describe the scope of the agreed-upon activities and the terms of compensation for those activities.
- **Disqualification.** The Firm may not compensate an individual who would otherwise be deemed an ineligible person with a disqualifying action or event under federal securities laws. Disqualifying actions and events include but are not limited to an SEC opinion or order barring, suspending, or prohibiting the person from acting in any capacity under the federal securities laws and certain convictions, orders, and legal proceedings described in Section 203(e) of the Advisers Act.

If the person providing the testimonial or endorsement is being compensated (whether cash or non-cash) at a value of more than $1,000 within a 12-month period, this is subject to additional requirements and disclosures. Any Promoters being compensated at a value of more than $1,000 per year require Compliance Department review and approval prior to being used.

DE MINIMIS EXEMPTION

If the cash or non-cash compensation is valued at LESS than $1,000 per 12-month period, a written agreement is NOT required, and the disqualification provision described above does not apply. In order to determine whether the de minimis exemption has been exceeded (at least $1,000 in any 12-month period), the Firm must maintain records of any amount of compensation paid to a Promoter, including the value of non-cash compensation.

OTHER EXEMPTIONS

If a testimonial or endorsement is furnished by an officer, director, partner, or employee of the adviser; a person who controls, is controlled by or is under common control with the adviser; or an officer, director, partner, or employee of such a control affiliate, the adviser does not have to comply with the disclosure requirements of Rule 206(4)-1(b)(1) so long as two conditions are satisfied.

- **First,** the affiliation between the adviser and the Promoter must be disclosed or readily apparent to the client or investor at the time the testimonial or endorsement is disseminated.
- **Second,** the adviser must document the Promoter's status at the time the testimonial or endorsement is disseminated.

Furthermore, subject to the same two conditions, the adviser need not have a written agreement with an affiliated Promoter. Notwithstanding these exemptions, the adviser oversight and disqualification provisions continue to apply to compensated promotional activities by affiliated personnel.

REGISTRATION REQUIREMENTS

Notwithstanding the above, some state rules and regulations require persons receiving compensation for client referrals to be registered as investment advisers or Investment Adviser Representatives (IARs). **The Firm will ensure that any person (individual or entity) acting as a solicitor is properly registered, if applicable by State statues, as an IAR of the Firm or investment adviser prior to receiving compensation for client referrals, if required.**

THIRD-PARTY ATTRIBUTION

In addition to "advertisements" directed by the Firm, the Firm shall also be responsible for "advertisements" directed by a third-party if the Firm (or a related person) participates in the communication. Whether information posted or published by third parties is attributable to an adviser requires an analysis of the facts and circumstances to determine (i) whether the adviser has explicitly or implicitly endorsed or approved the information after its publication (adoption) or (ii) the extent to which the adviser has involved itself in the preparation of the information (entanglement).

At a minimum, the following factors should be considered by the Firm when assessing whether it has participated in a third-party "advertisement":

- Was the Firm involved in creating or disseminating the advertisement (entanglement)?
- Did the Firm authorize the communication?
- Did the Firm provide the material to third-party for dissemination?
- Did the Firm endorse the material after publication (adoption)?
- Are the materials collaborative (ex. fund of funds, 3rd party models)?
- Did the Firm selectively delete, alter, or endorse comments on a third parties' content on the Firm's social media platform(s)?

ENDORSEMENTS (PREVIOUSLY REFERRED TO AS SOLICITORS)

An "endorsement" is similar to a testimonial, but it is made by a person other than a current client or investor, and may include a general approval, support or recommendation of the adviser or its supervised persons.

DISCLOSURES

Like testimonials addressed above, endorsements must satisfy the following conditions:

Prominent Disclosures. The Firm must disclose, or reasonably believe that the person giving the endorsement discloses, *clearly and prominently*, the following at the time the endorsement is disseminated:

- The endorsement was given by a person other than a current client or private fund investor, as applicable;
- That cash or non-cash compensation was provided for endorsement, if applicable; and
- A brief statement of any material conflicts of interest on the part of the person giving the endorsement resulting from the adviser's relationship with such person.

Oversight and Compliance. All endorsements are subject to an oversight and compliance provision under the Marketing Rule. Specifically, the Marketing Rule requires the adviser to have:

- A *reasonable basis* for believing that any endorsement complies with the requirements of the rule, and
- A *written agreement* with any person giving a compensated endorsement that describes the scope of the agreed-upon activities and the terms of the compensation for those activities when the adviser is providing compensation for testimonials and endorsements that exceeds $1,000 over a 12-month period (written agreement requirement).

DISQUALIFICATION FOR PERSONS WHO HAVE ENGAGED IN MISCONDUCT

The Firm is prohibited from compensating a person, directly or indirectly, for an endorsement if the Firm knows, or in the exercise of reasonable care should know, that the person giving the endorsement is an ineligible person at the time the endorsement is disseminated (disqualification provision). The disqualification provision does not apply to uncompensated testimonials or endorsements.

An “ineligible person” is a person who is subject to an SEC opinion or order barring, suspending, or prohibiting the person from acting in any capacity under the federal securities laws or to any one of many enumerated “disqualifying events.” The definition extends to employees, officers, directors, general partners, and elected managers of an ineligible person. The Marketing Rule includes a ten-year lookback period across all “disqualifying events,” which aligns with disciplinary disclosure reporting on Form ADV, Part 1.

EXEMPTIONS

The Marketing Rule provides the following exemptions from certain requirements otherwise applicable to testimonials and endorsements:

De Minimis Compensation. An endorsement disseminated for no compensation or *de minimis* compensation (US$1,000 or less during the preceding 12 months) is not subject to the disqualification provision for ineligible persons or the written agreement requirement. However, these communications remain subject to the rule's disclosure and general adviser oversight requirements.

Affiliated Personnel. An endorsement by an employee or other affiliate of an adviser is not subject to the disclosure requirements, or written agreement requirement, but remains subject to the disqualification and general adviser oversight requirements. The affiliation between the adviser and such person must be *readily apparent* to or disclosed to the client or investor at the time the endorsement is disseminated, and the adviser must document such person's status.

Registered Broker-Dealers. An endorsement by a broker or dealer registered under Section15(b) of the Securities Exchange Act of 1934 (Exchange Act) is not required to comply with:

- Any disclosure requirements if the testimonial or endorsement is a recommendation subject to Regulation Best Interest;

- The “other disclosure” requirements if the testimonial or endorsement is provided to a person that is not a retail customer (as that term is defined in Regulation Best Interest); and
- The disqualification provision, if the broker or dealer is not subject to statutory disqualification under the Exchange Act.

TESTIMONIALS AND ENDORSEMENTS ADVERTISING PROCEDURES

- Prior to discussions with a potential Promoter, the CCO will be responsible for exercising reasonable care and conduct reasonable due diligence to confirm that the engaged Promoter is not subject to any applicable disqualification events.
- Promoters must be pre-approved by CCO prior to engaging in a Promoter Agreement with the Firm.
- The CCO is responsible for the review of all Agreements with Promoters including terms of what compensation arrangements are finalized.
- CCO will approve all compensation arrangements to ensure they are in line with policies at the Firm.
- The CCO will be responsible for preparing the disclosure statement specific to each Promoter Agreement and train Promotors to deliver this statement during engagement of the Client.
- The CCO will review and approve of use of all testimonials and endorsements included in our advertising materials prior to use with clients. Proper Disclosures per the policy above are required prior to use.
- The CCO and CFO will review at least on an annual basis all Promotor agreements for compensation to determine if the de minimis amount of Promoters providing testimonials, endorsements and/or referrals needs to be reviewed and revised.
- The CCO will provide testing throughout the year to designed to ensure that the Firm creates and keep records relating to our determination that the Firm has a reasonable basis for believing that a testimonial or endorsement complies with Rule 206(4)-1.

BOOKS AND RECORDS

Below is a sample of the books and records to be maintained:

- Oral advertisements such as radio show recordings and podcasts;
- Any communication or document related to the Firm’s determination that it has a reasonable basis for believing that a testimonial or endorsement complies with the Marketing Rule due diligence requirement;
- Any agreement with the Promotor that is paid for the endorsement or testimonial.

THIRD-PARTY RANKINGS OR AWARDS

A "third-party rating" is defined in the Marketing Rule to mean a rating or ranking of an investment adviser provided by a person who is not a related person (as defined in the Form ADV Glossary of Terms), and such person provides such ratings or rankings in the ordinary course of its business. Paragraph (c) of the Marketing Rule subjects advertisements that include third-party ratings to certain conditions and disclosure requirements.

POLICY

[OPTION 1]:

Without exception, Firm does not allow the use of third-party rankings or awards by IARs in marketing and advertising.

OR

[OPTION2]:

The Firm does allow for use of third-party ratings in an advertisement if the following conditions are met:

- Any questionnaire or survey used in the preparation of the third-party rating is structured to make it equally easy for a participant to provide favorable and unfavorable responses and is not designed or prepared to produce any predetermined result.
- Advertisements containing third-party rating clearly and prominently disclose the following:
- Date on which the rating was given and the period of time upon which the rating was based;
- Identity of the third party that created and tabulated the rating;
- Criteria for the receipt of such accolade; and
- If applicable, that compensation has been provided directly or indirectly by the adviser in connection with obtaining or using the third-party rating.

Including these disclosures in an advertisement that contains third-party ratings would not contain a rating that could otherwise be false or misleading under the Marketing Rule's general prohibitions, or under the general anti-fraud provisions of the federal securities laws.

Additionally, the Firm and IAR must consider the following factors when determining whether any advertisement containing a third-party ranking is false or misleading, and thus, prohibited:

- Whether the advertisement discloses the criteria on which the rating was based;
- Whether an adviser or IAR advertises any favorable rating without disclosing any facts that the adviser or IAR knows would call into question the validity of the rating or the appropriateness of advertising the rating (e.g., the adviser or IAR knows that it has been the subject of numerous client complaints relating to the rating category or in areas not included in the survey);
- Whether an adviser or IAR advertises any favorable rating without also disclosing any unfavorable rating of the adviser or IAR (or the adviser that employs the IAR);
- Whether the advertisement states or implies that an adviser or IAR was the top-rated adviser or IAR in a category when it was not rated first in that category;
- Whether, in disclosing an adviser's or IAR's rating or designation, the advertisement clearly and prominently discloses the category for which the rating was calculated, or designation determined, the number of advisers or IARs surveyed in that category, and the percentage of advisers or IARs that received that rating or designation;
- Whether the advertisement discloses that the rating may not be representative of any one client's experience because the rating reflects as average of all, or a sample of all, of the experiences of the adviser's or IAR's clients;
- Whether the advertisement discloses that the rating is not indicative of the adviser's or IAR's future performance; and

- Whether the advertisement discloses prominently who created and conducted the survey and that advisers and IARs paid a fee to participate in the survey.

Third-party ranking and/or awards need CCO approval prior to their use in any materials used by the Firm. The CCO will ensure proper disclosure is used along with the third-party ranking and/or award. Non-descriptive awards may not be used.

THIRD PARTY RANKING PROCEDURES

- The CCO will review all proposed use of publication of any third-party ratings or survey results and conduct reasonable due inquiry regarding the methodology used by the third-party to determine such rating. A copy of any questionnaire or survey used in the preparation of a third-party rating included or appearing in any advertisement will be maintained for books and records.
- The CCO will review all use of advertisements referencing third party rankings prior to use with prospects/clients.
- The CCO will provide testing throughout the year to designed to ensure that the Firm creates and keep records communications relating to our determination that the Firm has a reasonable basis for believing that a testimonial or endorsement complies with Rule 206(4)-1.

BOOKS AND RECORDS

Below is a sample of the books and records to be maintained:

- Any communication or document that the rating complies with the Marketing Rule's due diligence requirement; and
- Copies of any questionnaire or survey used for determining a third-party rating used in Marketing.

PERFORMANCE ADVERTISING

POLICY

[OPTION 1]:
Without exception, Firm does not advertise performance.

OR

[OPTION2]:
The Marketing Rule sets specific conditions on the presentation of performance but does not set forth separate requirements for performance advertising in materials intended for retail persons and nonretail persons, with the consequence that certain performance- related requirements primarily intended to protect unsophisticated retail investors must be included in performance advertisements directed to sophisticated institutions.

GENERAL PROHIBITIONS

The Marketing Rule prohibits including in any advertisement:

- Any presentation of gross performance, unless the advertisement also presents net performance:
    - With at least equal prominence to, and in a format designed to facilitate comparison with, the gross performance; and
    - Calculated over the same time period, and using the same type of return and methodology, as the gross performance.
- Any performance results, of any portfolio or any composite aggregation of related portfolios, in each case other than any private fund, unless the advertisement includes performance results of the same portfolio or composite aggregation for one-, five-, and ten-year periods, each presented with equal prominence and ending on a date that is no less recent than the most recent calendar year-end; except that if the relevant portfolio did not exist for a particular prescribed period, then the life of the portfolio must be substituted for that period.
- Any statement, express or implied, that the calculation or presentation of performance results in the advertisement has been approved or reviewed by the SEC.
- Any related performance, unless it includes all related portfolios; provided that related performance may exclude any related portfolios if:
    - The advertised performance results are not materially higher than if all related portfolios had been included; and
    - The exclusion of any related portfolio does not alter the presentation of any applicable prescribed time periods
    - Any extracted performance, unless the advertisement provides, or offers to provide promptly, the performance results of the total portfolio from which the performance was extracted.
- Any hypothetical performance unless the investment adviser:
    - Adopts and implements policies and procedures reasonably designed to ensure that the hypothetical performance is relevant to the likely financial situation and investment objectives of the intended audience of the advertisement,
    - Provides sufficient information to enable the intended audience to understand the criteria used and assumptions made in calculating such hypothetical performance, and
    - Provides (or, if the intended audience is an investor in a private fund provides, or offers to provide promptly) sufficient information to enable the intended audience to understand the risks and limitations of using such hypothetical performance in making investment decisions.

"Hypothetical Performance," a term that includes, but is not limited to, model performance, back tested performance and targeted or projected performance.

- *Model portfolios* include those managed alongside portfolios for actual investors, computer-generated models and models the adviser creates or acquires from third parties, that are not used for actual investors.
- *Back tested performance* is created by applying a strategy to data from prior time periods during which the strategy was not actually used.
- *Targeted returns* reflect aspirational performance goals, while projected returns are the adviser's performance estimates, which often are based on historical data and assumptions. Targeted and projected returns relate to a portfolio or the advertised investment advisory services; they do not include general market projections or predictions about economic conditions.

Hypothetical performance does not include an interactive analysis tool that allows a client or investor (or prospective client or investor) to produce simulations and statistical analyses that present the likelihood of various investment outcomes if certain investments are made or strategies are followed, but only if the adviser:

- describes the criteria and methodology used, including the tool's limitations and key assumptions;
- explains that the results may vary with each use and over time;
- if applicable, describes the universe of investments considered in the analysis; explains how the tool determines which investments to select; discloses if the tool favors certain investments and if it does, explains the reason for the selectivity; and explains that other investments not considered may have characteristics similar or superior to those being analyzed; and
- discloses that the tool generates hypothetical outcomes.

Nor does hypothetical performance include "predecessor" performance that complies with the requirements discussed below.

The Firm will determine if hypothetical performance is relevant by the following:

- The specific financial situation and investment objectives of the intended audience;
- Past experiences with clients. This criteria may include, whether an investor is an existing client, the net worth or investing experience of the investor, certain regulatory categories (e.g., qualified purchasers, qualified clients, or even qualified institutional buyers), or whether the investor type includes only natural persons or only sophisticated institutions.

As stated above, investment analysis tools are excluded from the definition, but an interactive analysis tool must include disclosures that:

- Provides a description of the criteria and methodology used, including the investment analysis tool's limitations and key assumptions;
- Explains that the results may vary with each use and over time;
- If applicable, describe the universe of investments considered in the analysis, explain how the tool determines which investments to select, disclose if the tool favors certain investments and, if so, explain the reason for the selectivity, and state that other investments not considered may have characteristics similar or superior to those being analyzed; and,
- State that the tool generates outcomes that are hypothetical in nature.

"Investment analysis tool" means an interactive technological tool that produces simulations and statistical analysis that present the likelihood of various investment outcomes if certain investments are made or certain investment strategies or styles are undertaken, thereby serving as an additional resource to investors in the evaluation of potential risks and returns of investment choices.

PERFORMANCE ADVERTISING PROCEDURES

- The CCO is responsible for review and approval of any advertisements containing performance information to ensure that they are presented in accordance with the relevant requirements, include all required related portfolios, and reflect prescribed time periods.
- The use of hypothetical performance in advertising materials is strictly prohibited unless reviewed and approved by the Firm prior to use.
- The CCO will determine if advertisement is relevant to the Firm and the investment objectives of the intended audience of the advertisement.
- The CCO will review, determine, and document if advertising of past performance of specific securities that were or may have been profitable to the Firm are fair and balanced, depending on the facts and circumstances.

BOOKS AND RECORDS

Below is a sample of the books and records to be maintained:

- Communications relating to the performance or rate of return of any portfolios;
- Accounts, books, internal working papers, and other documents necessary to form the basis for or demonstrate the calculation of the performance or rate of return of any portfolios;
- Records supporting hypothetical performance to include copies of all information provided or offered pursuant to the hypothetical performance provisions of the Marketing Rule;
- Records of who the "intended audience" is pursuant to the hypothetical performance and model fee provisions of the Marketing Rule;
- Documentation of communications relating to predecessor performance.